

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE

v.

DAVID MOFFETT,

Defendant.

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Case No.: 1708000042

Submitted: September 11, 2018

Decided: October 31, 2018

**DECISION GRANTING DEFENDANT'S MOTION TO SUPPRESS**

The defendant, David Moffett, has been charged with Driving Under the Influence of Alcohol under 21 *Del. C.* § 4177(a)(1) and Failure to Have Insurance Identification under 21 *Del. C.* § 2118(p)(1). A suppression hearing has been held in which this Court heard testimony from a law enforcement officer of the Harrington Police Department. Upon conclusion of the testimony, the defendant moved this Court to suppress all evidence obtained after his stop by the law enforcement officer on the grounds that he was seized in violation of his Constitutional rights. The Court heard the arguments of the parties and, then, allowed supplemental briefing on the motion. After carefully considering the evidence introduced at the hearing and all arguments made by the parties, the defendant's motion to suppress is granted.

## FACTS

In the early morning hours of August 1, 2017, police dispatch received an anonymous call<sup>1</sup> about a black Ford Expedition that had run into a ditch and showed signs of reckless driving. Dispatch then sent officers a “BOLO”<sup>2</sup> for this vehicle in the Harrington, Delaware, area. Approximately fifteen minutes later, a law enforcement officer of the Harrington Police Department (“Officer”) was on patrol when he observed the defendant, a white male, operating a black Ford Explorer<sup>3</sup> on Dorman Street in Harrington, Delaware. The Officer did not observe the defendant commit any traffic offenses or other crimes and did not observe any damage to the Explorer. The Officer ran the defendant’s license plate number through the Criminal Justice Information System (“CJIS”) which indicated that the defendant, a white male, was the registered owner of the vehicle. CJIS also informed the Officer of a “flag”<sup>4</sup> pertaining to a Protection from Abuse (“PFA”) Order against the defendant that had been issued by the Kent County Family Court on January 3, 2017. The “flag” indicated that the defendant had not been served with the PFA Order. The “flag” did not direct the Officer to effect service of the PFA Order upon the defendant. The Officer was able to view the PFA Order and retrieve a hard copy from the equipment in his vehicle. The PFA Order did not contain any language directing anyone to effect service upon the defendant. The first paragraph of the PFA Order stated that both the defendant and the petitioner were present and represented by counsel at the PFA hearing on January 3, 2017. Additionally, nothing further in CJIS contained an order by Family Court directing that the PFA Order be served on the defendant.

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<sup>1</sup> The Court notes it was later determined by both counsel that the anonymous caller was the defendant’s ex-wife.

<sup>2</sup> The term “BOLO” means “be on the lookout.” A BOLO is issued to inform law enforcement officers about a wanted suspect, person of interest, or dangerous or missing persons.

<sup>3</sup> The Court notes that Ford Explorers look substantially like Ford Expeditions, except that Explorers are smaller.

<sup>4</sup> The Officer testified that a “flag” alerts officers to anything outstanding, such as PFA orders or court documents that have not been served.

The Officer, while following a standing order from his sergeant to effect service of PFA orders when there is information that they have not been served, stopped the defendant's vehicle to serve the PFA Order. Prior to the stop, the Officer did not have any reasonable and articulable suspicion that the defendant had committed, was committing, or was about to commit a criminal act.

### **PARTIES' CONTENTIONS**

The defendant contends there was no constitutionally valid basis for the Officer's seizure of him and, therefore, all evidence that is the fruit of the warrantless seizure must be suppressed. The State responds that a law enforcement officer acting pursuant to 10 *Del. C.* § 1046(d) does not violate a citizen's constitutional rights under the Fourth and Fourteenth Amendments when stopping a vehicle to serve a PFA order. It is the State's position that 10 *Del. C.* § 1046 gave the Officer authority to effect service of the PFA Order to ensure enforcement of the order. The defendant rebuts that the Officer was not authorized to stop the defendant to effect service of the PFA Order under 10 *Del. C.* § 1046 because there was no order by the Family Court to effect service.

### **LEGAL STANDARD**

“‘[A]ny evidence recovered or derived from an illegal search and seizure’ must be excluded from evidence.”<sup>5</sup> “When a defendant moves to suppress evidence collected [without a warrant] the State bears the burden of proving by a preponderance of the evidence ‘that the challenged police conduct comported with the rights guaranteed [to the defendant] by the United States Constitution, the Delaware Constitution and Delaware statutory law.’”<sup>6</sup>

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<sup>5</sup> *State v. Sapp*, 2017 WL 57840, at \*2 (Del. Super. Jan. 4, 2017) (quoting *Jones v. State*, 745 A.2d 856, 872-73 (Del. 1999)).

<sup>6</sup> *Id.* (quoting *State v. Kang*, 2001 WL 1729127, at \*3 (Del. Super. Nov. 30, 2001)) (second alteration in original).

## DISCUSSION

The Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section Six of the Delaware Constitution forbid unreasonable searches and seizures. “While a temporary stop or detention of a motor vehicle and its occupants is not normally described as a seizure, the Fourth Amendment has been construed to protect against unreasonable governmental intrusions into the privacy of the individual, regardless of whether they are labeled stops, detentions, frisks or seizures.”<sup>7</sup> Police action that interferes with a defendant’s right to free access to public highways is considered an official intrusion which must be examined for compliance with Fourth Amendment requirements.<sup>8</sup> “[B]efore the government may single out an automobile to stop it, there must be specific facts justifying the intrusion. Conversely, a random stop in the absence of specific justifying facts is unreasonable and unconstitutional.”<sup>9</sup> For a stop to be reasonable, either a warrant must authorize a seizure or an exception to the warrant requirement must apply.<sup>10</sup> In *Terry v. Ohio*, the United States Supreme Court found that the Fourth Amendment allows a police officer to detain an individual for investigatory purposes for a limited scope and duration, but only if such detention is supported by a reasonable and articulable suspicion of criminal activity.<sup>11</sup> Under the Delaware Code, police officers “may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime . . . .”<sup>12</sup> The term “reasonable ground” has the same meaning as “reasonable and articulable suspicion.”<sup>13</sup>

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<sup>7</sup> *State v. Prouse*, 382 A.2d 1359, 1362 (Del. 1978) (citing *Terry v. Ohio*, 392 U.S. 1 (1968); *Sibron v. New York*, 392 U.S. 40 (1968)).

<sup>8</sup> *See id.*

<sup>9</sup> *Id.* at 1364.

<sup>10</sup> *See Katz v. United States*, 389 U.S. 347, 357 (1967).

<sup>11</sup> *Terry*, 392 U.S. at 20-21.

<sup>12</sup> 11 Del. C. § 1902(a).

<sup>13</sup> *Jones v. State*, 745 A.2d 856, 861 (Del. 1999).

The only issue before the Court for the present matter is whether 10 *Del. C.* § 1046 authorizes a law enforcement officer to stop a vehicle on a public roadway to serve a PFA order without any other justification for the stop. Without any relevant case law addressing this issue, the Court must look to the statutory construction of 10 *Del. C.* § 1046 to determine the constitutionality of the seizure in the present case. A court engages in statutory construction and interpretation “only where a statute is ambiguous and its meaning cannot be clearly ascertained.”<sup>14</sup> “The goal of statutory construction is to determine and give effect to legislative intent.”<sup>15</sup> A statute that is unambiguous does not need judicial interpretation because “the plain meaning of the statutory language controls.”<sup>16</sup> However, an ambiguous statute “should be interpreted ‘in a way that will promote its apparent purpose and harmonize it’ with the statutory scheme.”<sup>17</sup> In essence, an ambiguous statute should be read as a whole, rather than in parts, and each section should be read in light of all other sections to create a harmonious whole.<sup>18</sup> A statute is considered ambiguous if “it is reasonably susceptible of different conclusions or interpretations” or “if a literal reading of the statute would lead to an unreasonable or absurd result not contemplated by the legislature.”<sup>19</sup>

The Court finds that the provisions of 10 *Del. C.* § 1046 are ambiguous when read in parts and, therefore, must be read as a whole to harmonize it with the legislature’s intent for the statutory scheme. Subsection (d) is the provision at issue in the instant case. It states:

If a law-enforcement officer determines that an otherwise valid protective order cannot be enforced because *the respondent has not been notified or served with the order*, the officer shall inform the respondent of the order, make a reasonable effort

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<sup>14</sup> *Newtowne Vill. Serv. Corp. v. Newtowne Rd. Dev. Co., Inc.*, 772 A.2d 172, 175 (Del. 2001); see *Carper v. New Castle Cnty. Bd. Of Educ.*, 432 A.2d 1202, 1205 (Del. 1981).

<sup>15</sup> *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999).

<sup>16</sup> *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 933 (Del. 2007) (quoting *Eliason*, 733 A.2d at 946).

<sup>17</sup> *Id.* (quoting *Eliason*, 733 A.2d at 946).

<sup>18</sup> See *Dewey Beach Enters., Inc. v. Bd. of Adjustment of Town of Dewey Beach*, 1 A.3d 305, 307 (Del. 2010) (quoting *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 900 (Del. 1994)).

<sup>19</sup> *LeVan*, 940 A.2d at 933 (quoting *Newtowne*, 772 A.2d at 175).

to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.<sup>20</sup>

When reading subsection (d) alone, one may reasonably conclude it to mean either (1) that law enforcement officers may serve PFA orders at any time without the direction of the Court when it is believed that the respondent has not been served or notified, or (2) that officers may serve PFA orders without the direction of the Court only when a violation of the PFA has occurred and enforcement is not possible until the respondent has been served or notified about the order.

The Court finds that Section 1046 must be read as a whole to reasonably interpret all of its various provisions. Subsections (a) and (c) must also be considered when interpreting subsection (d) of the statute. Subsection (a) states, “[t]he Court may direct that pleadings and orders filed or issued under this part be served upon the respondent by the Sheriff or the Sheriff’s deputy or by any person authorized by statute or court rule to serve process.”<sup>21</sup> This subsection grants the Court authority to direct that PFA pleadings and orders be served upon the respondent by law enforcement officers or anyone authorized to serve process. Subsection (c) states the following:

A law-enforcement officer shall arrest, with or without a warrant, any individual whom the officer has probable cause to believe has violated a protective order issued under this part or a valid foreign protection order under Part E of this subchapter *and who has notice or knowledge of the protective order*. Presentation of a protective order that identifies both the protected person and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a protective order exists. The protective order may be either in tangible form or stored in DELJIS or other electronic medium if it is retrievable in perceivable form. Probable cause for arrest may be established by a good faith reliance on information contained in DELJIS. If a protective order is not presented, the law-enforcement officer may consider other information in determining whether there is probable cause to believe that a protective order exists.<sup>22</sup>

Subsection (c), in essence, allows a law enforcement officer to arrest an individual he has probable cause to believe has violated a valid PFA order when that individual has notice or knowledge of

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<sup>20</sup> 10 Del. C. § 1046(d) (emphasis added).

<sup>21</sup> 10 Del. C. § 1046(a).

<sup>22</sup> 10 Del. C. § 1046(c) (emphasis added).

the PFA order. Reading subsections (a), (c) and (d) of Section 1046 together, the Court finds that subsection (d) only applies when (1) there is no Court order directing service of the PFA order, (2) a law enforcement officer has probable cause to believe an individual has violated the PFA order and (3) the individual has not been notified<sup>23</sup> or served with the order. Then, the PFA order should be served on the individual to permit future enforcement of the order.<sup>24</sup>

In the present case, looking to subsection (a) first, there was no order from the Family Court directing the PFA Order to be served upon the defendant. Additionally, the defendant did not commit any violation of the PFA Order that would give the Officer justification to stop and arrest the defendant under subsection (c) or stop and serve the defendant under subsection (d). In the current case, the defendant had the requisite notice of the PFA Order under Sections 1043(f) and 1046(d) because the defendant was notified through his appearance before the Family Court when the order was issued on January 3, 2017. Furthermore, the Officer did not possess any reasonable grounds to suspect that the defendant committed, was committing, or was about to commit a crime to justify his seizure under the Fourth Amendment. Therefore, the Officer did not have any valid constitutional or statutory basis<sup>25</sup> to stop the defendant when he did on the morning of August 1, 2017, and all evidence resulting from his seizure must be suppressed.

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<sup>23</sup> Notice of a PFA order is satisfied “[i]f the order recites that the respondent appeared in person before the Court,” thus, “the necessity for further service is waived and proof of service of the order is not necessary . . . .” 10 *Del. C.* § 1043(f).

<sup>24</sup> The Court notes that if a law enforcement officer has justification to stop an individual for another reason and not merely to serve a PFA order, then the officer may serve the PFA order upon the individual without a Court order directing service.

<sup>25</sup> The Officer did not have authority under 10 *Del. C.* § 1046 to stop the defendant. Therefore, the stop effectuated by the Officer violated the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section Six of the Delaware Constitution.

### **CONCLUSION**

For the foregoing reasons, the defendant's motion to suppress is granted. All evidence seized as a result of the stop of his motor vehicle is suppressed.

**IT IS SO ORDERED.**



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CHARLES W. WELCH  
JUDGE